

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PARIS PHILLIPS	:	Case No. 1:20-cv-00937-DRC
Cincinnati, Ohio,	:	
	:	Judge Douglas R. Cole
and	:	
	:	
EDWARD LARKIN, JR., as next friend	:	
of M. A., a minor	:	
Cincinnati, Ohio,	:	
	:	FIRST AMENDED COMPLAINT
Plaintiffs,	:	
v.	:	Jury Demand Endorsed Hereon
	:	
SUN LIFE ASSURANCE CO.	:	
OF CANADA	:	
One Sun Life Executive Park	:	
Wellesley Hills, MA 02481,	:	
	:	
Defendant.	:	

For their First Amended Complaint, the Plaintiffs, Paris Phillips and Edward Larkin, Jr., state as follows:

Parties

1. Plaintiff Paris Phillips, now 20 years of age, is a named beneficiary of a life insurance policy issued by Sun Life Assurance Company of Canada insuring his late mother, Nicole Powell.

2. Edward Larkin, Jr., is the maternal grandfather of M. A., a minor. M. A. is a named beneficiary of a life insurance policy issued by Sun Life Assurance Company of Canada insuring her late mother, Nicole Powell.

3. Sun Life Assurance Company of Canada is the insurer of an employee welfare benefit plan established and maintained by Fifth Third Bancorp under the provisions of the Employee Retirement Income Security Act and is the real party in interest with respect to the life insurance benefits at issue in this case.

Jurisdiction and Venue

4. The Plaintiffs' claims arise under ERISA. Jurisdiction is premised on 29 U.S.C. §1132.

5. The benefit plan at issue in this case is administered in Cincinnati, Ohio. Venue is proper in the Western Division of the Southern District of Ohio.

Facts

6. Immediately prior to her death, Nicole Powell was an employee of Fifth Third Bancorp and was a participant in an employee welfare benefit plan (the "Plan") established by Fifth Third Bancorp for the purpose of providing life insurance coverage for its employees and their beneficiaries.

7. Under the terms of its Group Policy No. 202008 (the "Policy"), Sun Life Assurance Company of Canada ("Sun Life") is the insurer of the life insurance benefits provided under the Plan.

8. Prior to her death, Nicole Powell submitted to the Plan a beneficiary designation, in a manner authorized and approved by the Plan, naming her two children, Paris Phillips and M. A., as sole beneficiaries of her life insurance benefit.

9. Nicole Powell died on April 21, 2014.

10. Both Mr. Phillips and M.A. were minors at the time of Ms. Powell's death. Mr. Phillips did not attain age 18 until 2018. M. A. remains a minor.

11. On August 28, 2019, Mr. Phillips submitted on his behalf and on behalf of M.A., a claim to Sun Life for the proceeds of the life insurance benefit payable as a result of his mother's death.

12. Sun Life has not, to date, either approved or denied the claim.

13. As a result of Sun Life's failure to act on the claim in a timely manner, the Plaintiffs are deemed to have exhausted their administrative remedies.

Count I – For Benefits

14. The foregoing paragraphs are incorporated by reference as if fully rewritten herein.

15. The Plaintiffs bring this claim under 29 U.S.C. §1132(a)(1)(B) and seek legal relief in the form of life insurance proceeds due them as a result of their mother's death.

16. The Plaintiffs are the designated beneficiaries of the life insurance policy insuring their late mother, Nicole Powell.

17. The Plaintiffs are now entitled to the full proceeds of the Policy.

18. The Plaintiffs have been damaged by Sun Life's refusal to pay to them the proceeds of the Policy following their mother's death.

WHEREFORE, the Plaintiffs, Paris Phillips and Edward Larkin, Jr., as next friend of M.A., a minor, demand judgment in their favor and against Defendant Sun Life Assurance Company of Canada, as follows:

- A. An award of monetary relief in the amount due to them under the Policy;
- B. Pre-judgment and post-judgment interest;
- C. Attorney's fees and the costs of this action; and
- D. Such other and further relief as the Court determines to be equitable and just.

Respectfully submitted,

/s/ Tony C. Merry

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JURY DEMAND

Plaintiffs' Complaint seeks legal relief. Plaintiffs, therefore, demand trial by jury.

/s/ Tony C. Merry